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37 CFR 1.138**Fax directly to the Pre-Grant Publication Division at (703) 305-8568; or
mail to: Mail Stop Express Abandonment
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| | |
|------------------------|-----------------|
| Application Number | 09/912,791 |
| Filing Date | July 25, 2001 |
| First Named Inventor | Ping-Cheuk Wong |
| Art Unit | 2873 |
| Examiner Name | Hung Xuan Dang |
| Attorney Docket Number | 062581.012201 |

Please check only one of boxes 1 or 2 below:

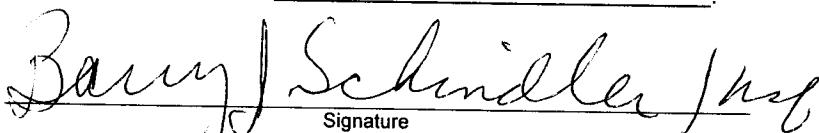
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1. **Express Abandonment**

I request that the above-identified application be expressly abandoned as of the filing date of this paper.

2. ** Please see attached Express Abandonment Remarks
Express Abandonment in Favor of a Continuing Application

I request that the above-identified application be expressly abandoned as of the filing date accorded the continuing application filed previously or herewith.

NOTE: A paper requesting express abandonment of an application is not effective unless and until an appropriate USPTO official recognizes and acts on the paper. See the Manual of Patent Examining Procedure (MPEP), section 711.01.**TO AVOID PUBLICATION, USE FORM PTO/SB/24A INSTEAD OF THIS FORM.****TO REQUEST A REFUND OF SEARCH FEE AND EXCESS CLAIMS FEE (IF ELIGIBLE), USE FORM PTO/SB/24B INSTEAD OF THIS FORM.**I am the: applicant. assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) attorney or agent of record. Attorney or agent registration number is 32,938 attorney or agent acting under 37 CFR 1.34, who is authorized under 37 CFR 1.138(b) because the application is expressly abandoned in favor of a continuing application (box 2 above must be checked). Attorney or agent registration number is _____


Signature

December 11, 2006

Date

Barry J. Schindler

212-801-2244

Telephone Number

Typed or printed name

Note: Signature of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

 Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process an application). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Express Abandonment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Reissue Application of Ping-Cheuk Wong
Serial No.: 09/912,791 Examiner: Hung Xuan Dang
Filed: July 25, 2001 Art Unit: 2873
For: **Assembling Structure For Assembling A Fit-On Spectacle Frame With An Original Spectacle Frame**

EXPRESS ABANDONMENT OF REISSUE APPLICATION

MAIL STOP REISSUE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Express Abandonment of Reissue Application No. 09/912,791 ("791 reissue application") is filed to expressly abandon the above-captioned reissue application without prejudice to the scope or term of United States Patent No. 5,940,162 ("162 patent") and end the reissue proceedings. The reasons that the '791 reissue application should be abandoned without prejudice to the '162 patent are as follows:

1. The '162 patent was filed as Application No. 09/096,203 on June 11, 1998 and issued as the '162 patent on August 17, 1999.
2. On July 25, 2001, the Applicant, Ping-Cheuk Wong, filed the '791 reissue application. In conjunction with that filing, Mr. Wong filed a Reissue Declaration. ("7/25/01 Reissue Declaration").
3. In Paragraph 5 of the 7/25/01 Reissue Declaration, Mr. Wong indicated that "I believe the '162 Patent to be wholly or partially inoperative or invalid, by reason

of my inadvertently (and without deceptive intent or intent to disclaim) claiming less than I had a right to claim in the patent."

4. In Paragraph 7 of the 7/25/01 Reissue Declaration, Mr. Wong indicated that "All errors which are being corrected in the present Application for Reissue of the '162 patent up to the time of filing of this declaration arose without any deceptive intention on the part of the Applicant."

5. On July 25, 2001, the Applicant filed a Preliminary Amendment in the '791 reissue application. ("7/25/01 Preliminary Amendment"). In that amendment, new claims 3-21 were added to the '791 reissue. The Applicant noted that "Applicant's U.S. Patent No. 5,940,162 (the "'162 Patent") is wholly or partially inoperative because Applicant inadvertently claimed less than he had the right to claim, based on the totality of his invention and the priority date(s) to which he is entitled. Applicant has therefore added broader claims 3-21" (7/25/01 Preliminary Amendment, p.8). Further, the Applicant noted that new claims 3-21 were copied directly from U.S. Patent 6,092,896; and noted that the Applicant was currently involved in a litigation in which the Applicant had been sued for alleged infringement of U.S. Patent No. 6,092,896. *Id.*

6. It appears from the prosecution history of the '791 reissue application that no Office Action ever issued addressing the 7/25/01 Preliminary Amendment.

7. On September 30, 2002, Applicant filed a Formal Request for Interference pursuant to 37 CFR §1.607. ("9/30/02 Interference Request") requesting that the Examiner declare an interference between the '791 reissue application and U.S. Patent No. 6,092,896.

8. It appears from the prosecution history of the '791 reissue application that no Office Action ever issued addressing the 9/30/02 Interference Request.

9. Applicant assigned his entire interest in the '162 patent to Aspex Eyewear, Inc. on June 14, 2006. This assignment is recorded at reel 018524, frame 0437 at the United States Patent and Trademark Office.

10. Form PTO/SB/24, "Express Abandonment Under 37 CFR 1.138", is filed herewith and attached as Exhibit A. In the attached form, assignee of the entire interest of the '162 patent requests that the '791 reissue application be expressly abandoned.

REMARKS

The assignee of the entire ownership interest of the '791 reissue application respectfully requests that the '791 reissue application be abandoned with no prejudice to the duration or scope of the '162 patent claims. Pursuant to 37 CFR §1.138, the assignee of the entire interest of the '162 patent has requested express abandonment of the '791 reissue application. Pursuant to 37 CFR §§1.33(b)(1) and 1.32(b), attorneys of record for Aspex Eyewear, Inc. are filing and signing Form PTO/SB/24 herewith. Pursuant to 37 CFR §1.178(c), neither Applicant nor assignee Aspex Eyewear, Inc. has surrendered the original patent during the pendency of the '791 reissue proceeding. Rather, Applicant expressly stated pursuant to 37 CFR §1.175 that reissue of the '162 patent was requested as Applicant had claimed less than Applicant had a right to claim in the prosecution of the '162 patent. As neither the Applicant nor the United States Patent and Trademark Office have made any statements whatsoever in the prosecution of the '791 reissue application that could serve to limit the scope of the '162 patent, it is respectfully

submitted that the '791 reissue application may be expressly abandoned without prejudice to the scope and/or duration of the rights encompassed by the '162 patent.

CONCLUSION

In view of the above remarks, Applicant respectfully submits that the '791 reissue application should be expressly abandoned pursuant to 37 CFR §1.138 without prejudice to the term or scope of United States Patent No. 5,940,162. Early and favorable action is requested.

If there are any charges and/or credits in connection with this case, please charge the deposit account of Greenberg Traurig LLP, Account No. 50-1561, Reference 062581.012201.

Respectfully submitted,



Date: December 11, 2006

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